IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 104 OF 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT & ORS. - Appellant(s)
Versus
GOHIL MAHIPATSINH BALUBHA - Respondent(s)

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Appearance :
MR. DIPEN DESAI, AGP for Appellant(s) : 1 - 3.
MR. NIRZAR S. DESAI for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 05/10/2006

ORAL JUDGMENT

Heard the learned Counsel for the parties.

2. The appellants, State of Gujarat and its Officers, being aggrieved by the Judgement and Decree

dated 20th January, 2005 passed in Regular Civil Appeal No.87 of 1998 by the learned Joint District Judge, Fast Track Court II, Bhavnagar, confirming the Judgement and Decree dated 24th February, 1998 passed by the learned 3rd Joint Civil Judge (S.D.), Bhavnagar in Regular Civil Suit No.227 of 1994, have filed this appeal.

3. The short facts necessary for disposal of the present appeal are that the original plaintiff (since deceased) was an ex-armyman, he made an application somewhere in the year 1976 to the State Government that he would be entitled to allotment of certain agricultural land in accordance with the scheme, therefore, some land be alloted to him. As nothing was done, various reminders were sent by him up to the year 1991. Last of his application came to be rejected by the State Government on the ground that in accordance with the Circular dated 20/12/1989, the land within 10 kms. radius of Corporation limits could not be allotted and that it was not possible for the State to allot the land. However, the State asked the plaintiff to make some other application for allotment of some other land. The plaintiff, instead of making yet another application for some allottable land, which could be allotted in his favour, filed regular Civil Suit with a prayer that the State Government be

directed to allot the land in his favour which he had applied for.

3.1 The State Government, as defendant, appeared in the Court and submitted, *inter alia*, that in accordance with the Government Circular dated 20/12/1989, the land could not be alloted as it was within the periphery of 10 kms. radius. Such land was required for development of the township and after the comments and objections from the Departments are received and considered, if any surplus land is left, the same would be disposed of by way of an auction. They also submitted that such civil suit was not maintainable.

3.2 The learned trial Court, after hearing the parties, decreed the suit holding that the plaintiff would be entitled to part of land Survey No.215/3 admeasuring 5 hectares, 38 Are and 23 sq. mtrs. of Village Budhel. It also directed that the State Government shall allot such lands and if such order is not passed within the period aforesaid, the land would be deemed to be alloted in favour of the plaintiff.

3.3 As the appeal proved futile, the State is before this Court.

4. The appeal has been admitted for hearing on 27th March, 2006 on the following substantial questions of law:

> "(1) *Whether in the facts and circumstances of the case the Civil Court had jurisdiction to entertain, try and dispose of the suit and consequently also the appeal in view of the provisions of Land Revenue Code and Revenue Jurisdiction Act?*
>
> (2) *Whether in the facts and circumstances of the case the original plaintiff ought to have preferred an appeal before the appropriate authority and was entitled to give to the Civil Court without existing the other statutory and alternative remedy and thus whether jurisdiction of the Civil Court is barred under Section 9 of Code of Civil Procedure?"*

5. Shri Dipen Desai, learned Counsel for the appellants, submits that the State Government had floated a Scheme on 15th February, 1989, which provided that the land may be allotted in accordance with Scheme. His submission is that it would be within the sole discretion of the State Government to allot or not to allot the land. The submission is that the plaintiff's application was required to be considered, but, he had no right of

allotment.

He also submits that the decree, in its nature and directions, could not be granted by the trial court and the trial could only issue a direction that if the plaintiff makes an application, it be considered in accordance with law.

6. Shri Nirzar Desai, learned Counsel for the respondent-plaintiff, on the other hand, submits that present is a case of absolute indifference shown by the State Authority; it also shows that the State Officers had taken a platonic approach and were not looking to the pathetic condition of the plaintiff. According to him, the plaintiff was required to wait for fifteen years and abruptly his application was rejected on the ground that the land is within the periphery of 10 kms. and, therefore, the same could not be allotted. He submits that the trial Court was absolutely justified in granting the decree.

7. From paragraph-3(k) of the Scheme, it would clearly appear that from a scheduled area, the land can be allotted in favour of certain people in accordance with the priority. Priority No.1 would be all those

agriculturists, whose land stand washed away either because of excess rains, because of floods and they are not left with any source of livelihood. An ex-armyman comes in the second priority. The Scheme does not say that submission of an application for allotment of the land would be a guarantee of allotment of land and submission of the application would make the applicant entitled for allotment. When a person makes an application under some Scheme, then, he is entitled to claim the right that his application must be considered and be disposed of in accordance with the schemes, rules, circulars, notification or law. He cannot say that such application should be decided in his favour or be deemed to be allowed, nor a Court can make an order of allotment, nor can issue a direction that the application would stand allowed and such land should be allotted in favour of a particular person. Such a suit even otherwise would not be maintainable before the Civil Court because by issuing such a direction the Civil Court would be asking the Government to do an act which the Government in its discretion was entitled to do or not to do.

8. It is also to be noted that the State Government, while rejecting the plaintiff's application, did not reject his right to make further application, the

State required the plaintiff to make yet another application so that it could be considered favourably and if possible, land could be allotted in his favour. The plaintiff, who waited for almost about sixteen years, did not make another application, but, rushed to the civil Court.

9. In the opinion of this Court, the suit before the learned Court below was not maintainable. The civil Court even otherwise would have no jurisdiction to grant such declaration that a particular piece of land should be allotted in favour of the applicant-plaintiff and in case such an order would not be passed by the State, the land would be deemed to be allotted. I fail to understand that how a Court could confer such jurisdiction upon itself. The Appellate Court also committed the very same error as it did not appreciate the legal position. Even from the order passed by the learned Appellate Court, it would appear that it had applied a very casual and cavalier approach and has disposed of the appeal, less appreciating the legal questions involved in the matter. The first question, on which the appeal has been admitted, must be answered in favour of the appellants.

10. As the first question is decided against the

interest of the respondents, it is not necessary to consider the question regarding the plaintiff's right to prefer an appeal to the appropriate authority. The appeal deserves to and is, accordingly, allowed. The judgements and decrees passed by the learned Courts below are set aside. There shall be no order as to costs.

However, before parting with the matter, I must say that if the legal representatives of the plaintiff, under one scheme or the other or under some circulars, notifications or Government Resolutions, are entitled to make an application for allotment of land, then, they would be entitled to make an application, which shall be disposed of by the competent Authority preferably within six months of the submission of the application. Let a decree be framed accordingly.

[R.S.Garg, J.]

*kamlesh**